IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2554 OF 2004

M/s.Tarmat Infrastructural
and Engineering P.Ltd. ...Petitioner
vs.
Municipal Corporation of
Greater Bombay & Anr. ...Respondents

Mr.V.R.Bhandare for the petitioner
Ms Aruna Sawla for the respondents

CORAM:H.L.GOKHALE & A.S.OKA,JJ.
DATE : FEBRUARY 6,2006

P.C.:

1. Heard Mr.Bhandare in support of this Petition and Ms Sawla for the Respondents. The grievance raised in this Petition is to the notice 24th February 2004 under Section 314 of the B.M.C. Act, 1888 issued by the Respondents. A submission has been made that the concerned parcel of land is owned by the Petitioner and it is not a part of the land which has been acquired by the Municipal Corporation.

2. At earlier stage when this matter was heard, the Division Bench which heard this matter was of the view that the letter of the Assistant Engineer dated 6th March 2004 had clarified the position rightly and that the Petitioner had failed to substantiate the existence of his structure prior to 1962. This order was passed on 26th September 2005 and was carried in Appeal in Supreme Court and the Supreme Court sent down the same to this Court for considering the matter afresh.

3. After the matter came up before this Division Bench, we asked the Municipal Corporation to file a reply and rejoinder has been filed thereafter. Having gone through the reply and the rejoinder, we find that the parcel of the land has been acquired by paying compensation to the owners. According to the Corporation, the Petitioner has come subsequently to the acquisition. The Petitioner, on the other hand, is submitting that even from the award and the various documents on record, the parcel of the land which was acquired was open parcel of land whereas it is the case of the Petitioner that his structure has been assessed for N.A. purposes at the relevant time. The question is whether the parcel of land which the Petitioner is claiming to be owned and possessed by him and on which he claims to have his structure was a parcel of land which forms a part of the acquisition. This aspect can be decided only by evidence by the Civil Court. The Petitioner will be at liberty to approach the appropriate Court.

4. This being the position, we permit Mr.Bhandare to withdraw this Petition with liberty to file a suit for appropriate declaration and interim order. Petition is disposed of as withdrawn. Ad-interim protection which is granted earlier will continue to operate for a period of eight weeks further from today.

(H.L.GOKHALE,J.)

(ABHAY S.OKA,J.)